



# Sacramento County District Attorney's Office

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August 16, 2021

Ellen Leonida  
351 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

Re: Public Records Act Request

Dear Ms. Leonida:

We are in receipt of your request for records under the California Public Records Act (CPRA) dated July 23, 2021.

You attached two exhibits to your request. Exhibit 1 is a copy of a May 13, 2019, CPRA request, and Exhibit 2 is copy of a July 29, 2019, CPRA request; both of these were submitted to this office on behalf of the ACLU in 2019. Responses to both were timely issued and multiple documents were provided.

In your current request, you write:

“This CPRA letter constitutes a renewal of the ACLU’s two prior requests (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney of Sacramento for the time-period 2015 to present.”

You then set forth what we interpret to be your current request in items 1a-1, 2a-e, 3a-c, and 4a-d. As to this current request, I will address each item individually as follows:

1. “Any and all written policies, memoranda, or guidance documents regarding:
  - a. Diversion eligibility and/or programming.”

This request seeks various information regarding diversion programs. We are interpreting your request for “diversion eligibility and/or programming” to apply to defendants charged with a crime, as the Sacramento County District Attorney’s Office does not itself utilize pre-filing diversion programs.

We do not have an index that identifies all documents relevant to this response. The CPRA applies to existing records and does not require a public agency to create a record that does not exist. (Gov’t Code section 6252(e) and (f).) Further, such a request is unduly burdensome, as it would require us to hand search tens of thousands of files and

over 400 employees offices to locate potentially responsive documents. This is unduly burdensome, something not required under the CPRA. However, we have been able to locate several items that we are providing to you, as explained below.

Your request does not clarify what you consider “diversion.” California Penal Code section 1000 et seq. provides several statutory diversion programs. As for the documents you seek regarding eligibility for such programs, the various criteria are set forth by statute and thus this information is already available to you publicly. Multiple diversion eligibility and programming information is available to you publicly and can be found at <https://www.saccourt.ca.gov/criminal/collaborative-courts.aspx>, which is the Sacramento Superior Court’s website.

In 2018, AB 1810 added Penal Code sections 1001.35 and 1001.36, which created the mental health diversion program. Similarly, the requirements for this diversion are set forth by statute. We possess documents responsive to this request which we are providing to you. See attachments titled “Mental Health Diversion Process for Felony Cases Only,” “Memorandum – Mental Health Diversion Nov 6 2018,” and “MHDiversion – AB1810 7-13-18.” We also possess documents responsive to this request and are providing them to you. See attachments titled “Felony MHD\_Distributed 12-18-18\_RevJan2019,” MDP\_Application and Instructions Complete,” “MHC Stats 7-8-21,” “MHD Cheat Sheet\_FINAL\_OCT\_2018\_Updated July 22, 2019,” and “Misdemeanor MHD\_Final\_updated 7-26-19.” We also possess a draft of an internal procedures guide prepared by court staff. Please note this version was at the time not final and subject to being changed. See attachment titled “10.29.18 MHC- Procedure Manual.”

In Sacramento County, we have several collaborative courts, which involve partnerships between our office, the Superior Court, the Probation Department, the Public Defender’s Office, and sometimes community-based organizations to provide services and avoid incarceration for certain offenders. These programs do not fall within the statutory definition of diversion as set forth in Penal Code section 1000 et seq. However, successful completion of some of these programs may result in a dismissal of charges, similar to the effect of a statutory diversion program. We are interpreting your request as including within your definition of “diversion” those programs where dismissal is available. Information regarding these, and other collaborative courts in Sacramento County, are provided on our website at [www.sacda.org](http://www.sacda.org) under the “Services” heading by clicking on the link “Collaborative Courts.” Further documents we possess relating to those programs are being provided. See attachments titled “Sacramento County District Attorney’s Office,” “Community & Government Relations,” “Citizen Academy-CollCourts2019,” “Collaborative Courts Referral Quick Reference Guide,” “How To Guide\_Collaborative Courts\_Rev\_Feb 8\_2019,” Collaborative Court Advisory Board Orientation Packet,” “How to Guide\_Collaborative Courts\_Rev\_August 2021,” “CA 2020 ScheduleofClassesBinder,” “CGR Outreach Programs – Defined,” and “Citizens Academy Brochure Update 01.20.”

Other documents potentially responsive to this request are also being provided. See attachments titled “Sac County CSEC MOU-5.14.19,” “Sac Court Dedicated Cal 2.26.19,” “AB 79 ALTA Diversion Summary,” “Quarterly DUITC Stats 5-27-21,” “Reentry)2nd-Quarter\_Apr\_Jun\_2021,” and “Veterans Treatment Court (Fiscal yr 20-21 Data).” Finally, general information related to diversion eligibility and/or programs can be found in our “Legal\_and\_Case\_Prosecution\_Policy\_Manual\_December\_10\_2019,” which we are providing to you and is publicly available on our website, [www.sacda.org](http://www.sacda.org).

Regarding additional documents identifying office policies or guidelines regarding diversion courts, it is our practice, pursuant to the law, not to disclose these types of policy documents because they are exempt from disclosure under the CPRA by the deliberative process privilege. (Government Code section 6255. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning how prosecutors exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k). Other notations regarding specific cases are also exempt as privileged attorney work product.

Given the broad scope of your request, to the extent that we may possess materials related to diversion that may be contained in any of our investigatory files, Government Code section 6254(f) exempts from CPRA disclosure records of complaints to or investigations conducted by any local police agency, investigatory files compiled by any local police agency, and investigatory files compiled by any other local agency for law enforcement or licensing purposes. Under the California Constitution and by statute, the District Attorney is vested with broad authority to investigate violations of the law, and prosecute such matters in criminal, civil, or administrative actions, as may be appropriate. The District Attorney’s employees include peace officers, attorneys, and other staff who perform such investigations. There can be no question that the District Attorney’s Office is a local agency that conducts police or law enforcement investigations and has complaints and investigatory files within the meaning of section 6254(f). Case law supports this conclusion. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Rackaucas v. Superior Court* (2012) 104 Cal.App.4th 169; *Fagan v. Superior Court* (2003) 111 Cal.App.4th 607; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099.) This exemption applies not only to documents generated by the agency, but also to records gathered from victims, witnesses, and others. (See *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.) This exemption continues to apply even if the case is complete, and the investigation closed. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Williams v. Superior Court* (1993) 5 Cal.4th 337.) To the extent that we may be in possession of some of the materials you seek, such materials are part of our investigatory files and are thus exempt from production under the CPRA.

Further, we would not necessarily be able to identify documents related to diversion programs simply from searching outcomes in our computerized case management

system. We would have to examine the case event history or our physical files for notations. Given the time frame you have identified and the number of cases that would be involved, this would require a hand search of voluminous materials and would be unduly burdensome, something not required under the CPRA. (See Gov't Code section 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-60; see also *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-454.)

b. "Custody and/or bail recommendations."

We do not have an index that identifies documents relevant to this response. The CPRA applies to existing records and does not require a public agency to create a record that does not exist. (Gov't Code section 6252(e) and (f).) Further, to locate all materials relevant to this request would require us to examine all of our investigatory files for the time period you specify. As noted above, those files are exempt from production under the CPRA. Further, such a request is unduly burdensome, as it would require us to hand search tens of thousands of files, something not required under the CPRA. Depending on the content of any such materials, other exemptions could apply such as the deliberative process privilege, attorney work product, or other exemption.

In addition, these types of policy documents are exempted from disclosure under the CPRA by the deliberative process privilege. Government Code § 6255. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136. The courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. *Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478. Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k).

That said, some information related to this request can be found in our Legal and Case Prosecution Policy Manual which we are providing to you as noted above.

- c. "Charging recommendations and/or decisions, including, but not limited to:
- i. Charging recommendations and/or decisions regarding enhancements;
  - ii. Charging recommendations and/or decisions regarding special circumstances;
  - or
  - iii. Charging recommendations and/or decisions regarding wobblers."

Given the broad scope of this request (including all sub-requests), to the extent that we may possess relevant materials in our investigatory files, such materials are exempt from production under Government Code section 6254(f). Further, it is our practice, pursuant to the law, not to disclose these types of policy documents because they are exempt from disclosure under the CPRA by the deliberative process privilege. (Government Code section 6255. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning

how prosecutors exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k).

However, information relevant to this request can be found our Legal and Case Prosecution Policy Manual which we are providing to you as noted above.

d. “Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963).”

The Sacramento County District Attorney’s Office trains its attorneys on federal and California cases regarding ethical discovery practices, including those set forth in *Brady v. Maryland*. It has been our practice not to disclose specific training materials. The documents you seek are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov’t Code section 6255; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney’s Office to perform its function of ensuring the fair administration of justice.

Furthermore, under Government Code section 6254(k), the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*) Our *Brady* and discovery policies in general are stated in our Legal and Case Prosecution Policy Manual and are encompassed in that document’s statement that “It is the policy of the Sacramento County District Attorney’s Office to promptly provide all discoverable materials in criminal cases in accordance with the law. Prosecutors shall follow all constitutional, statutory, and ethical discovery obligations.” As noted, we are providing that manual to you.

Finally, we do not have in index identifying all the materials specified in this request, to conduct a search for them would be unduly burdensome, and any such materials contained within our investigatory files are exempt from CPRA production as detailed in the response to 1.a., above.

e. “Jury selection.”

The Sacramento County District Attorney’s Office trains its attorneys on federal and California cases regarding the ethical selection of jurors. It has been our practice not to

disclose specific training materials. The documents you seek are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code section 6255; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Training discussions include tactical and strategic information. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice.

Furthermore, under Government Code section 6254(k), the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*) Our policy regarding jury selection is stated in our Legal and Case Prosecution Policy Manual and is encompassed in that document's statement that "The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion not to pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants." As noted, we are providing that manual to you.

Finally, we do not have an index identifying all the materials specified in this request, to conduct a search for them would be unduly burdensome, and any such materials contained within our investigatory files are exempt from CPRA production as detailed in the response to 1.a., above.

f. "Sentencing recommendations."

Please see response to 1.b., above.

g. "Prosecution of minors."

Our policy regarding this topic can be found in our Legal and Case Prosecution Policy Manual, which we are providing to you. Your request for records on this topic is broad and could encompass a wide variety of materials that are not required to be produced due to the deliberative process and work product privileges, the investigatory file exemption, and other exemptions depending on the content of such materials. I also note that because of the privacy and confidentiality concerns that makes juvenile case records exempt from disclosure under the CPRA. (See Gov't Code §§ 6542(c), 6254(k), 6255(a).) Dissemination of information from juvenile case files is limited by Welfare

and Institutions Code section 827. Records may be sealed pursuant to Welfare and Institutions Code sections 781 and 786.

h. “Parole recommendations.”

Any written policies, memoranda, or guidance documents we may possess regarding parole recommendations would be exempt under the deliberative process privilege, attorney work product privilege, and Gov. Code section 6255 as detailed above. To the extent we may possess any such materials within our investigatory files, such materials are exempt from production pursuant to Gov. Code section 6254(f) as detailed above. We have publicly released some of our parole recommendations, which are available on our website at <https://www.sacda.org/early-prison-releases/early-prison-releases-opposition-letters/> within the four links that appear on that page.

i. “Pardon and commutation recommendations.”

See response to 1.h., above

j. “Reports to the State Bar relating to discipline and/or prosecutorial misconduct.”

Our Legal and Case Prosecution Policy Manual includes information responsive to this request. We are providing that to you.

k. “Data collection of relating to all criminal matters, including demographic data of defendants and victims.”

This language is vague. You do not define what you mean by “data collection.” If you seek statistical information from our prosecution files, demographic data of defendants and victims would come from our investigatory files, which are exempt from disclosure under Government Code section 6254(f), as noted above. If you wish to further clarify this request, please do so.

l. “Referral of cases for federal prosecution.”

Any cases we have referred for federal prosecution would be part of our investigatory files exempt from disclosure under Government Code section 6254(f), as noted above. Otherwise, we have no responsive documents.

2. “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:”

a. “Which are mandatory for prosecutors.”

These types of documents are exempted from disclosure under the CPRA by the

deliberative process privilege. Government Code section 6255. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.

In addition, this office employs over 170 attorneys and possesses a large amount of material in the form of books, treatises, memoranda, publications, and other documents that could be considered within the scope of your request for “all training materials.” A large amount of these materials has been purchased or received by this office, and a large number of materials have been purchased or received by individual members of this office. Given the nature of criminal case litigation, the materials or portions of materials could be located in individual offices, online, in criminal case files, and elsewhere. To locate all such materials would be unduly burdensome, as it would require us to hand search hundreds of employees’ offices, computers, and tens of thousands of files, something not required under the CPRA.

Further, a significant amount of such documents is subject to United States Copyright law. Legal publications and treatises – all within the scope of your request - and other non-agency publications used in the education and training of our staff are controlled by federal copyright law. (See, e.g., 17 U.S.C. sections 102, 103.) Release of such copyrighted materials would similarly violate Government Code section 6254(k). We believe that copyrighted materials produced by an outside source which this office has are not the type of public records contemplated for release within the meaning of the CPRA.

Further, under Government Code section 6254(k), the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*)

b. “Which are optional for prosecutors.”

See response to 2.a., above.

c. “Which relate to jury selection.”

See response to 2.a., above.

d. “Which relate to bias, implicit bias, unconscious bias, and/or racism.”

See response to 2.a., above.

e. “Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook,

Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).”

See response to 2.a., above.

3. “Records concerning the Racial Justice Act:”<sup>1</sup>

a. “Implementation of and compliance with the RJA.”

To the extent that our investigatory files potentially contain materials related to the implementation of, compliance with, or communications concerning Penal Code section 745, such materials are exempt from production pursuant to Gov. Code section 6254(f).

As with any new law, “records concerning” the implementation of, compliance with, or communications concerning the new law could potentially be located in the office of any attorney and could be in various form. We do not have an index that identifies the records you seek and are not required under the CPRA to create one. To search over 170 attorneys’ offices and potentially over 170 computers and thousands of criminal case files is unduly burdensome and not required under the CPRA.

Further, depending on the content of any such materials, multiple exemptions and/or privileges could apply including the deliberative process privilege, attorney work product privilege, exemptions pursuant to Gov. Code section 6254(k), and others.

b. “Communications concerning the RJA:”

See response to 3.a., above.

c. “Trainings related to the RJA.”

See response to 3.a. and 2.a., above.

4. “All investigations into *Batson-Wheeler* motions, including, but not limited to:

- a. Motions filed;
- b. Motions granted;
- c. Internal training and/or discipline; or
- d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.”

This request seeks records of “all investigations into *Batson-Wheeler* motions” that includes but is not limited to “Motions filed, “Motions granted,” “Internal training and/or discipline,” and “Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.”

We do not track such motions in our computerized case management system, nor do we

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<sup>1</sup> I assume by “Racial Justice Act” you mean Penal Code section 745. If I am mistaken, please advise me.

have an index that identifies them. The only means to identify documents relative to motions being filed and/or granted would be to hand search tens of thousands of files, which again is unduly burdensome. Further, except for motions filed in court by this office, any other documents relevant to this request would come from our investigatory files, which are exempt from production pursuant to Gov. Code section 6254(f).

Regarding internal training, please see response to 2.a., above.

I now turn to your “renewal” of two prior CPRA requests submitted on behalf of the ACLU on May 13, 2019, and July 29, 2019. You write that “This CPRA letter constitutes a renewal of the ACLU’s two prior requests (as relevant, updated to the present day).” I do not understand what you mean by “renewal ... as relevant, updated to the present day” in this context. We issued written responses to those requests in 2019 and also provided materials in 2019. You seem to contend that with regard to both prior CPRA requests, we provided nothing and simply asserted the records were not subject to disclosure. That is not accurate. I have retrieved our response to the May 13, 2019, request in which we provided over 20 separate documents totaling over 100 pages in response. Attached is a copy of our June 6, 2019, response to the May 13, 2019, request. In that response, we identified the materials provided.

I cannot tell if you were not aware that we provided those materials, or if the intent of your statement regarding our responses to the prior CPRA requests was not meant to be interpreted as asserting that we provided nothing, but rather whether you were referring to certain items not provided that you believe should have been provided. I ask you to please clarify exactly what you are asking for at this time.

As I am providing the responsive documents electronically, there is no charge.

Sincerely,

ANNE MARIE SCHUBERT  
DISTRICT ATTORNEY



Richard Miller  
Assistant Chief Deputy District Attorney